



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed August 27, 2014, under Wis. Admin. Code § DHS 10.55, to review a decision by the Community Care Inc. in regard to Medical Assistance, a hearing was held on September 30, 2014, at Waukesha, Wisconsin.

The issue for determination is whether the Family Care program correctly discontinued Petitioner's day center program.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Robert Alm

Community Care Inc.  
205 Bishops Way  
Brookfield, WI 53005

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County. He is a Family Care Program client. This appeal was filed by his guardian to contest the discontinuance of day center attendance.
2. The Family Care managed care organization (MCO) to which Petitioner is assigned discontinued his day center program effective August 1, 2014. That decision was reviewed by the MCO's grievance committee and it affirmed the discontinuance.

3. Petitioner suffered a traumatic brain injury in 2007. His birthday is [REDACTED] 6, 19[REDACTED]. He resides in a CBRF. He has been attending the day center 5 days per week though the length of that attendance is not in the record here.
4. The reason for the discontinuance of the day program is that Petitioner has expressed his dislike of being at the day center. He has indicated that he stays up late at the CBRF so that he can sleep during the day at the day center. He chooses not to participate in activities there, rather reads the paper and then puts it over his head and sleeps. He does not like being around groups of people or noise and does not tolerate others well. He can become verbally dismissive of others and can physically push others out of his way if agitated and trying to move about.

### DISCUSSION

The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1. It is authorized in the Wisconsin Statutes, §46.286, and is described comprehensively in the Wisconsin Administrative Code at Chapter DHS 10. Also see *Medicaid Eligibility Handbook (MEH)*, §29.1. The FCP has a standard contract (Contract) that further delineates the operation of the program by the agencies that implement the FCP. See <http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm>.

The Division of Hearings and Appeals can only exercise authority that has been delegated to it. With respect to Family Care the Wisconsin Administrative Code delegates hearing authority where the appeal is directly to the Division of Hearings and Appeals as follows:

...

- (a) Denial of eligibility under s. DHS 10.31 (6) or 10.32 (4).
- (b) Determination of cost sharing requirements under s. DHS 10.34.
- (c) Determination of entitlement under s. DHS 10.36.
- (d) Failure of a CMO to provide timely services and support items that are included in the plan of care.
- (e) Reduction of services or support items in the enrollee's individualized service plan, except in accordance with a change agreed to by the enrollee.
- (f) An individualized service plan that is unacceptable to the enrollee because any of the following apply:
  1. The plan is contrary to an enrollee's wishes insofar as it requires the enrollee to live in a place that is unacceptable to the enrollee.
  2. The plan does not provide sufficient care, treatment or support to meet the enrollee's needs and identified family care outcomes.
  3. The plan requires the enrollee to accept care, treatment or support items that are unnecessarily restrictive or unwanted by the enrollee.
- (g) Termination of the family care benefit or involuntary disenrollment from a CMO.
- (h) Determinations of protection of income and resources of a couple for maintenance of a community spouse under s. DHS 10.35 to the extent a hearing would be available under s. 49.455 (8) (a), Stats.
- (i) Recovery of incorrectly paid family care benefit payments as provided under s. DHS 108.03 (3).
- (j) Hardship waivers, as provided in s. DHS 108.02 (12) (e), and placement of liens as provided in ch. HA 3.
- (k) Determination of temporary ineligibility for the family care benefit resulting from divestment of assets under s. DHS 10.32 (1) (i).

...

*Wis. Admin. Code, § DHS 10.55(1); also see Stats., §46.287.*

The discontinuance of Petitioner's day center services does fall within the legal authority of the Division of Hearings and Appeals.

All parties agree that Petitioner does not like groups of people and noise and, sometimes, people at all. Despite this, Petitioner's guardian contends that Petitioner needs a reason to get up and about the day and

the day center attendance forces that. She indicates that he will state that he does not want to go anywhere but that he needs some activity and interaction with others. I am, however, sustaining the discontinuance of Petitioner's attendance at the day center. He does not want to be there. His frustration with being there has led to issues with staff and other attendees. Continuing to require him to do something that has led to these issues, and even confrontations, is detrimental to Petitioner and, potentially, others.

Petitioner's guardian is understandably frustrated with availability of services for Petitioner and would like alternatives. This is not, however, the role of the Division of Hearings and Appeals. It functions as a 'court system' for initial appeals of agency actions to determine whether or not those actions were correct. Having said that, it is apparent here that there needs to be further exploration of services to suit Petitioner's needs. He, again, suffered a traumatic brain injury yet is not a CBRF that specializes in individuals with the problems such injury causes. In fact, here, there is some suggestion that Petitioner is sent to the day center because the CBRF has no one to watch him during the day. This does not seem to meet the mandates of *Wis. Admin Code. §DHA 83.35-42, Resident Care and Services*. I would expect that the FCP MCO would work with Petitioner and his guardian to find a suitable residence and appropriate activities.

### **CONCLUSIONS OF LAW**

That the MCO correctly discontinued Petitioner's day center attendance.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 12th day of November, 2014

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on November 12, 2014.

Community Care Inc.  
Office of Family Care Expansion